IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2801 OF 2004

IN

SUIT NO.2648 of 1995

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Smt.Suparna Tapan Das ....Plaintiff

v/s.

Shri Alok Ajit Pal & Anr. ....Defendants

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Mr.Pankaj Kawli i/b U.M.Jhaveri for the Plaintiff.

Mr.Anand Grover i/b Prakash Mahadik for Defendants Nos. 1 & 2.

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CORAM: D.K.DESHMUKH, J.

DATED: 8TH SEPTEMBER,2005

P.C.:

1. By prayer clause (a) of this Notice of Motion the Plaintiff prays for appointment of receiver on Flat No.9. Admitted position is that the deceased Ajit Baran Pal was the owner of this flat. Admitted position is that the Plaintiff is the daughter of the deceased and the Defendant No.1 is the son. It is also an admitted position that the probate petition taken out by the Defendant No.1 for probating the will alleged to have been left behind by the deceased has been dismissed. It is also an admitted position that though the Defendant No.1 claims that his furniture etc. is lying inside the flat, the Defendant No.1 is not actually occupying the flat, because the Defendant No.1 is presently living abroad. It appears that the flat is presently lying vacant. In my opinion, since the flat is lying vacant, keeping the flat unused will not serve anybody's purpose. Therefore, in my opinion, it will be appropriate to appoint the receiver on the flat. Therefore, the receiver of this court is appointed as receiver of flat No. 9, 2nd floor, Oxford

Co.operative Housing Society Ltd. 15th Road, Bandra (West), Bombay-50, more particularly described at item No.1 in Schedule being Exh.A to the plaint. The Receiver shall appoint the Defendant No.1 as an agent of the Receiver, after taking formal possession of the flat from the Defendant No.1. Defendant No. 1 shall execute agency agreement within a period of six weeks from the date on which he is called upon to do so by the Receiver. Appointment of Defendant No.1 as agent shall be on usual terms and conditions, except security. Royalty shall be paid by the Defendant No.1 in following manner.

(i) The Receiver shall take steps to determine the royalty at the market rate of the flat, by appointing the valuer from the panel maintained by the Receiver and intimate to the Defendant No.1 the amount of royalty fixed by the valuer.

(ii) The Defendant No.1 shall pay 50% of the amount fixed as royalty by the valuer. Payment of royalty, including arrears of royalty, shall be made by the Defendant No.1 within a period of eight weeks from the date on which the amount of royalty is intimated to the Defendant No.1 by the Receiver.

(iii) In case the Defendant No.1 does not execute the agency agreement within the aforesaid period, the Receiver shall proceed to take physical possession of the flat from the Defendant No.1 and thereafter shall take steps to appoint the agent of the Receiver by inviting bids.

(iv) The highest bidder to be appointed as agent of the Receiver to be in possession of the flat on usual terms and conditions.

(v)In case the Defendant No.1 returns to India, he will be at liberty apply for modification or cancellation of this order.

2. By prayer clause (b) of this Notice of Motion, the Plaintiff seeks modification of the order dated 4th October, 2002 passed in Notice of Motion No.164 of 2001. Perusal of that order shows that by that order the court has directed appointment of agent in relation to the shops and the business left behind by the deceased by inviting bids. The modification in that order which is sought by the Plaintiff is that now instead of inviting bids for appointment of agent

of the Receiver, the Plaintiff should be appointed as agent of the Receiver. According to the Plaintiff, the change in the circumstance which entitles her to make this application for modification of this order is that after the order dated 4th October, 2002 was made, the probate petition filed by the Defendant No.1 has been dismissed. In my opinion, the circumstance of dismissal of the probate petition filed by the Defendant No.1 is not relevant so far as appointment of agent is concerned. That circumstance may be relevant in relation to the appointment of Receiver, but the Receiver was appointed by the order dated 4th October, 2002. It was also submitted on behalf of the Plaintiff that now she has discovered that no business was being carried out from the shop. In my opinion, this cannot be circumstance relevant for modifying the order. The order provides for inviting of bids for appointment of agent in relation to the shops and the business. The Plaintiff is also free to bid and after the bids that are received, it will indicate whether the business is being carried out or no. In my opinion, as the Defendant No.1 has also share in the shop, even according to the Plaintiff, the Plaintiff cannot be appointed as agent of the Receiver without requiring her to pay the

royalty at the market rate, especially so because at her instance by the same order I am directing the Defendant No.1 to pay the royalty at the market rate. Thus, I do not find any justification for modifying the order dated 4th October, 2002.

3. By ad-interim order passed in this Notice of Motion, ad-interim order in terms of prayer clause (c) has been granted. As a consequence of which the Plaintiff has been appointed as agent of the Receiver in relation to the shop premises. It is directed that the Receiver shall not immediately disturb the possession of the Plaintiff, but the Receiver shall take steps to invite bids. The Plaintiff can also submit her bid. In case the Plaintiff turns out to be the highest bidder, the Receiver shall appoint the Plaintiff as an agent of the Receiver in terms of the order dated 4th October, 2002. In that event, it will not be necessary to disturb her possession, but in case the Plaintiff does not turn out to be the highest bidder, the Receiver shall take steps to take physical possession of the premises from the Plaintiff and deliver it to the successful bidder, who will be appointed as the agent of the Receiver.

4. In case, the Plaintiff turns out to be the highest bidder, she will be required to deposit only 50% of the highest bid, which the Court Receiver may permit the Defendant No.1 to withdraw after deducting requisite expenses. In case the Plaintiff and the Defendant No.1 do not turn out to be highest bidder, then the Court Receiver , after deducting requisite expenses, shall permit the Plaintiff and the Defendant No.1, each, to withdraw 50% of the amount of bid. Motion disposed of.

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